

**STATE OF MICHIGAN BEFORE THE  
MICHIGAN JUDICIAL TENURE COMMISSION**

**IN THE MATTER OF:**

**FORMAL COMPLAINT NO. 72**

**HON. M.T. THOMPSON, Jr.  
Judge 70th District Court  
111 S. Michigan Avenue  
Saginaw, Michigan 48602**

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**RESPONDENT'S CLOSING ARGUMENT**

Respondent, Hon. M.T. Thompson, Jr., by and through his Attorney, Philip J. Thomas submits his written closing argument in the above-captioned matter.

**PRELIMINARY STATEMENT**

As more fully discussed below, it is undisputed that during the period of 1997 through 2001, Judge Thompson sought to develop and implement a middle school crime prevention program called "Making Choices And Facing Consequences." He spent a substantial amount of his own money and devoted countless hours of his personal time to the project.

On July 19, 2001, the Michigan Board of Education passed a resolution requiring public schools to adopt an anti-bullying policy and to implement anti-bullying programs. Shortly thereafter, Judge Thompson completed the latest component of his program called "Bullyproof."

He decided to conduct a one-month anti-bullying campaign to introduce his program to the educational community as it sought to comply with the Board of Education resolution. He subsequently agreed to merge his anti-bullying campaign with the Saginaw County Bar Association's 2002 Law Day activities. He also agreed to take charge of the Bar Association's appeal for corporate sponsors to underwrite the cost of the combined anti-bullying/Law Day activities.

It is undisputed that as a result of Judge Thompson's misinterpretation of certain Canons of the Michigan Code of Judicial Conduct, he solicited certain corporate contributions to fund some of the combined anti-bullying campaign/Law Day activities. Judge Thompson admitted the allegations set forth in the Formal Complaint concerning these solicitations. In fact, evidence was introduced at the hearing in this matter which proves conclusively that it was Judge Thompson who reported these solicitations to the State Court Administrative Office after he (Judge Thompson) learned that the solicitations may be inappropriate.

The outstanding complaint also alleges that Judge Thompson made two intentional misrepresentations in connection with his solicitations and that he failed to cooperate with the Judicial Tenure Commission's (JTC) investigation. First, the Formal Complaint alleges that he intentionally misrepresented that the Michigan Department of Education, the State Court Administrative Office and the Michigan Judicial Institute had agreed to jointly sponsor Making Choices And Facing Consequences as a pilot program in ten to fifteen school districts throughout Michigan. This alleged "misrepresentation" was set forth in letters to Helen James on January 24, 2002 and John Decker on January 7, 2002. Second, the Formal Complaint alleges that in Judge Thompson's January 7, 2002 letter to Mr. Decker, he (Judge Thompson) alleged that he was requesting a contribution for the anti-bullying/Law Day activities on behalf of the Saginaw

County Bar Association, when he was not authorized to solicit corporate contributions on its behalf.

The Formal Complaint does not allege that any of the entities which contributed monies to the anti-bullying campaign did so in reliance upon the alleged misrepresentations, nor does it allege that Judge Thompson misappropriated any of the contributions or sought any financial profit from his efforts. Significantly, Judge Thompson was devoting his own funds to development of the program. In fact, when he received the two \$1,000.00 honorariums referenced in the Formal Complaint at paragraph 5, he put that money into the programs.

Judge Thompson has adamantly denied making any intentional misrepresentations to anyone. As more fully developed *infra*, on April 20, 2001, Judge Thompson met with representatives from the Michigan Department of Education (Dr. Donald Weatherspoon), the State Court Administrative Office (John D. Ferry), and the Michigan Judicial Institute (Kevin J. Bowling). As a result of that meeting, it was Judge Thompson's understanding that each of them agreed to jointly sponsor his program in 10-15 school districts throughout the state. He confirmed the agreement in several letters to Dr. Weatherspoon, Mr. Ferry, and Mr. Bowling.

It is undisputed that Dr. Weatherspoon, Mr. Ferry and Mr. Bowling received Judge Thompson's confirming letters. It is also undisputed that although those three men received the confirming letters, they never contacted Judge Thompson to advise him that his understanding of their "agreement" was erroneous in any way. It is also undisputed that Judge Thompson had conversations and meetings with those same three men after the April 20, 2001 meeting and they never disputed the content of his letters or advised him that they did not have such an agreement. Judge Thompson has also asserted in his Affirmative Defense in the Answer to the Formal Complaint, and at the hearing, that if he made a mistake concerning the existence of the

agreement to jointly sponsor his program, it was an understandable and honest mistake, not an intentional misrepresentation. Judge Thompson believed at the time, and still believes today, that it was reasonable for him to rely upon the statements, conduct, and actions of Dr. Weatherspoon, Mr. Ferry, and Mr. Bowling, and their acquiescence to the content of his confirming letters.

Judge Thompson also maintains that on September 5, 2001, the Saginaw County Bar Association formally authorized him to solicit corporate sponsors for the combined anti-bullying campaign/Law Day activities. His letter to the law firm of John Decker was sent pursuant to that authorization. As more fully discussed below, during the course of these proceedings, the Commission failed to present a single witness who disputed Judge Thompson's authorization. In fact, the Bar Association's October 3, 2001 Minutes support Judge Thompson's position regarding these events.

Finally, Judge Thompson has denied that he failed to cooperate with the JTC's investigation. Judge Thompson received multiple inquiries/requests from the JTC. The delay in providing the JTC with certain information and documents clearly resulted from a personality conflict that developed between Paul J. Fischer, the Examiner, and Judge Thompson.

## **ARGUMENT**

### **A. Solicitations of Funds**

Judge Thompson was first elected to the 70th District Court effective January 1, 1997. From the moment he put on his robe, he was very concerned about the growing number of young violent offenders and the criminal justice system's increasing tendency to prosecute and sentence them as adults. He was also disturbed about certain flaws in the criminal justice system and the fact that a disproportionate number of these young adult defendants were African Americans.

In 1997, Judge Thompson began to examine major crime prevention programs to determine what, if anything, could be done to prevent or reduce violent behavior among children. By the end of 1998, Judge Thompson was convinced that crime prevention education could make a positive difference. However, he also concluded that the existing crime prevention programs had three major deficiencies:

- (1) They had no parental involvement component;
- (2) They were not incorporated into the school curriculum; and,
- (3) They were taught by uniformed police officers who had a maximum of 40 hours of training.

See Thompson Tr. pg. 775 and Exhibit 56.

Judge Thompson accepted the challenge of developing a crime prevention program that addressed these deficiencies. He organized his crime prevention program, "Making Choices And Facing Consequences," around the following five substantive areas: (1) The Michigan Court System with an emphasis on the criminal justice system; (2) Drugs and alcohol; (3) Violent crimes and gangs; (4) Property crimes; and (5) Miscellaneous (truancy, juvenile, etc.). Thompson Tr. pg. 775. The program included a written curriculum, classroom assemblies conducted by various criminal justice system professionals, conducting formal district court proceedings in the school, and a jail tour by the students and their parents. See Exhibit 56 for a full program description.

Judge Thompson spent a substantial amount of his own money and devoted hundreds of hours of his own time to developing his crime prevention program. He completed his initial set of program materials, Exhibits 58A through 58C and two accompanying videotapes, in 2000, and began to implement various parts of his program in local school districts.

**B. The Michigan Department of Education Contacted Judge Thompson Concerning its Interest in Co-sponsoring His Program**

In January 2001, Dr. Donald B. Weatherspoon, Assistant Superintendent, Michigan Department Of Education telephoned Judge Thompson and advised him that the department had an interest in his program. Judge Thompson agreed to meet with Dr. Weatherspoon and Anthony A. Derezinski, Associate Executive Director of Government Relations, Michigan Association of School Boards.

On January 26, 2001, Judge Thompson met with Dr. Weatherspoon and Mr. Derezinski in his office. At the request of Judge Thompson, Dr. Craig Douglas, Superintendent, Carrollton Public Schools, also participated in the meeting. During the course of the meeting, the four men discussed Making Choices And Facing Consequences and the need for such a program. Dr. Weatherspoon stated that he wanted to explore the possibility of co-sponsoring the program with the court system. He advised Judge Thompson that the first step in putting together such a joint venture would be a meeting with John Ferry, State Court Administrator. Dr. Weatherspoon agreed to arrange such a meeting.

Dr. Weatherspoon also indicated to Judge Thompson that in order to create an interest in the program, it would be necessary for Judge Thompson to make a series of presentations to various groups around the state. At Dr. Weatherspoon's request, Judge Thompson agreed to make a presentation to the Michigan Safe Schools Initiative on March 14, 2001, in Lansing, Michigan. Dr. Weatherspoon testified that following this meeting he telephoned either Mr. Ferry or Mr. Bowling to schedule a meeting. Weatherspoon Tr. pg. 566.

### **C. The State Court Administrator Summoned Judge Thompson to Lansing to Discuss His Program**

Judge Thompson was summoned to a March 12, 2001 meeting with Mr. Ferry, Mr. Bowling and J. Bruce Kilmer, Regional Court Administrator. The meeting took place in Mr. Ferry's office. During that critical March 12, 2001 meeting, Judge Thompson detailed the program and discussed funding sources. Mr. Ferry agreed to schedule a meeting with Dr. Weatherspoon.

Judge Thompson had not met either Mr. Ferry or Mr. Bowling prior to the March 12, 2001 meeting, but was aware of who they were and the positions they held in Michigan's Court system. See Ferry Tr. pg. 81 and Bowling Tr. pg. 361. During the hearing in this matter, each participant in the March 12, 2001 meeting testified as to what occurred at that meeting. While there were inconsistencies between the testimony of these four individuals, they ultimately agreed on the following two key points: 1) Judge Thompson was initially asked to go through his program materials, Exhibits 58A through 58C, and explain the program. Kilmer Tr. pg. 280. 2) Mr. Ferry expressed specific concerns about Judge Thompson's ongoing dispute with Judge Leopold P. Borrello, Chief Judge, Saginaw County Circuit Court and his opposition to Making Choices And Facing Consequences. Ferry Tr. pg.124 and Bowling Tr. Pg 403-406.

During the course of the meeting, Judge Thompson was also questioned about the donations he received from contributors listed in the acknowledgement sections of his program materials. Judge Thompson reported on the contributions and how he was handling them. See Thompson Tr. pgs. 793-795 and Bowling Tr. pgs. 365-366. At the conclusion of the March 12, 2001 meeting, Mr. Ferry advised Judge Thompson that they (Ferry, Kilmer and/or Bowling) would schedule a meeting with Dr. Weatherspoon and get back to him.

Two days after the meeting with Ferry, Kilmer and Bowling, pursuant to Dr.

Weatherspoon's invitation, on March 14, 2001, Judge Thompson made a presentation to the Michigan Safe Schools Initiative. At the conclusion of his presentation, the President of the Michigan Association of School Boards invited Judge Thompson to make a presentation at the association's July 20, 2001 Summer Academy in Frankenmuth, Michigan and its August 24, 2001 Summer Academy on Mackinac Island. Thompson Tr. pgs. 798-799

**D. On April 20, 2001 Judge Thompson, Dr. Weatherspoon, Mr. Ferry and Mr. Bowling Agreed to Move Forward with Making Choices And Facing Consequences**

On April 20, 2001, Judge Thompson met with Mr. Ferry, Mr. Bowling and Dr. Weatherspoon in the Michigan Judicial Institute's conference room. They discussed topics including the rash of school shootings around the country and the need for Judge Thompson's program. Judge Thompson testified that during the course of the meeting the group reached the following four specific agreements:

- (a) That the State Court Administrator, the Michigan Judicial Institute and the Michigan Department of Education would co-sponsor Making Choices And Facing Consequences as a pilot program in 10-15 school districts throughout the State of Michigan;
- (b) That the three sponsoring entities would issue a joint letter inviting various school districts to a July, 2001 meeting in Lansing;
- (c) That the Michigan Judicial Institute would hire a graduate student from Michigan State to help Judge Thompson align his program materials with certain Michigan educational standards; and,
- (d) That Dr. Weatherspoon would identify a testing expert who would assist in developing a pre-test and post-test to be used in conjunction with the program.

See Thompson Tr. pgs. 801-802.

While Dr. Weatherspoon, Mr. Ferry, and Mr. Bowling acknowledged (at the hearing in this matter) their agreement to go forward with the action listed in paragraphs (b) through (d), they took issue with Judge Thompson's use of the word "co-sponsor" in paragraph (a).



**E. Judge Thompson Sent a Confirming Letter to Document the Parties' April 20, 2001 Agreement**

It is undisputed that on April 24, 2001, Judge Thompson sent Mr. Ferry, Mr. Bowling and Dr. Weatherspoon a confirming letter summarizing his understanding of their April 20, 2001 agreements. All three men acknowledged receiving the letter, which in relevant part stated:

"Gentlemen:

I thought our meeting on Friday, April 20, 2001 was very productive. This will serve to confirm my understanding of the various agreements reached.

**It is my understanding that the State Court Administrator's Office, the Michigan Judicial Institute and the Michigan Department of Education will jointly sponsor Making Choices And Facing Consequences as a pilot program in 10-15 school districts throughout the State of Michigan, during the upcoming school year. . .**

We also agreed that a joint letter from the three sponsoring entities would be developed inviting representatives from the relevant school districts to attend a special July, 2001 meeting at the Michigan Judicial Institute's Lansing, Michigan facility.

During the course of our discussion, Mr. Ferry and/or Mr. Bowling also agreed to hire a summer intern to help develop and refine our written program materials. We also need a curriculum expert to help develop a pre-test and post-test. Some of the participants in our mass meeting might agree to help with this task.

Finally, I am excited about the proposed pilot program and what it could mean to our children. I trust this letter fairly and accurately summarize our April 20, 2001 meeting. (emphasis added)

See Exhibit 63. It is undisputed that following their receipt of Judge Thompson's April 24, 2001 letter, neither Mr. Ferry, Mr. Bowling nor Dr. Weatherspoon contacted Judge Thompson and told him that he had incorrectly summarized their agreement.

Judge Thompson was very specific as to why he sent this confirming letter. He testified as follows:

Attorney Thomas:                      Why did you do that, why did you send a confirming letter regarding that meeting with them?

Judge Thompson:                      I have been practicing law for over 25 years, I have tried hundreds of lawsuits in every stage in the State and Federal

system, I know that four people can witness the same event and participate in the same discussion and come away with a different understanding. A confirming letter is just that. It's something that's sent to make sure that there's been a meeting of the minds, that we have reached a mutuality of assent and they were operating with a common understanding. And so I sent that letter for those purposes.

And in that letter I cite all four of those agreements that I discussed here.

See Thompson Tr. pgs. 803.

Judge Thompson essentially testified that he sent the confirming letter to ensure that there had been a meeting of the minds between the participants at the April 20, 2001 meeting and that they were moving forward with a common understanding. One of the most critical pieces of physical evidence introduced at the hearing which supports Judge Thompson's understanding of the agreement reached at the April 20, 2001 meeting, is Exhibit 63 (see transcript page 435), which is Mr. Bowling's copy of Judge Thompson's April 24, 2001 confirming letter. As disclosed during Mr. Bowling's testimony at pages 436 and 438 of the hearing transcript, at the time he received Judge Thompson's April 24, 2001 letter, he noted that it contained an error concerning the location for the parties next meeting. In the margin of his copy of the letter, Mr. Bowling noted the error and wrote in the correct location for the next meeting. The Master is urged to consider this critical question: If Mr. Bowling took the time to write a correction in a margin concerning the location of the parties next meeting, which is clearly of a "procedural" nature, why didn't he take the time to write a corrective note concerning an extremely important substantive statement regarding the fact that a joint-sponsorship agreement had been reached? The plain truth is, that Judge Thompson's assertion that a sponsorship agreement had been reached was accurate.

Neither Judge Thompson nor his counsel are asking that the Master enter findings that

Dr. Weatherspoon, Mr. Ferry, or Mr. Bowling testified falsely about the agreement(s) reached at the April 20, 2001 meeting. It is quite possible that when testifying at the hearing, these three men simply have recollections which differ from those of Judge Thompson. It could also be that at the time the April 20, 2001 meeting took place, the use of the term sponsorship or joint-sponsorship was not as significant to them, as it was to Judge Thompson. What is clear, however, is that only Judge Thompson circulated a confirming letter concerning the April 20, 2001 meeting and not one of the other participants took action to express disagreement with the content of his letter.

**F. Use of Confirming Letters is a Well-Established Business and Professional Practice**

**1. Mr. Bowling acknowledged his routine use of confirming letters and testified that he knew Judge Thompson thought they had an agreement.**

The use of confirming letters is a well-established business and professional practice. During the course of his testimony, Mr. Bowling acknowledged that he has routinely used confirming letters during the course of his 22 years of employment by the court system. See Bowling Tr. pg. 440 where the following testimony is reflected:

Attorney Thomas: During the course of your service at the Judicial Institute, at the Regional Court Administrator's Office, did you ever have occasion to write letters to individuals confirming agreements or understandings from meetings or decisions that were being made?

Mr. Bowling: Frequently.

Attorney Thomas: Would you say that confirming letters are relied upon by individuals who send them out to clarify what their memory of a meeting is or what was understood by them from a meeting or a decision that was made?

Mr. Bowling: Yes.

Mr. Bowling also admitted that he knew Judge Thompson was operating with the understanding that the three entities had agreed to co-sponsor his program.

Attorney Thomas: Mr. Bowling, when you received this letter wasn't it apparent to you from the sentence that I read in -- the lead-in sentence, to Paragraph 2 -- wasn't it apparent to you that my client, Judge Thompson, was stating what his understanding of the agreement was?

Mr. Bowling: Yes.

See Bowling Tr. pg. 441.

**2. During the course of his testimony, Mr. Ferry admitted that he also uses confirming letters to confirm agreements reached at meetings.**

Commencing at Ferry Tr. pg. 133, Mr. Ferry testified as follows:

Attorney Thomas: However, during the course of your work with the State Court Administrator's Office do you ever have occasion to send out confirming letters to individuals confirming certain meetings that took place or certain conversations that were had?

Mr. Ferry: Sure.

Attorney Thomas: Have you sent confirming letters out in the past?

Mr. Ferry: Sure.

Mr. Thomas: Probably too many times to possibly put a number on, would that be fair to say?

Mr. Ferry: More or to remember, yes.

Continuing at Ferry Tr. pg. 135, Mr. Ferry testified:

Attorney Thomas: Have you ever sent out letters confirming the results of meetings that you have had with an individual?

Mr. Ferry: I believe I have, yes. . .

Attorney Thomas: And you consider those types of letters important?

Mr. Ferry: Yes.

This testimony makes it clear that Mr. Ferry understood the significance of Judge Thompson's April 24, 2001 confirming letter and that Judge Thompson was operating with the understanding that the three relevant entities would be jointly sponsoring his program.

**G. Dr. Weatherspoon Testified that Judge Thompson's April 24, 2001 Letter Accurately and Truthfully Summarized the Status of the Parties' Agreement**

During the course of the Examiner's direct examination of Dr. Donald B. Weatherspoon, the following exchange took place starting at page 571 of the hearing transcript:

Mr. Fischer: I direct your attention to the second paragraph of that letter, where it says: "It is my understanding," this is a letter from Judge Thompson to yourself, Mr. Bowling, Mr. Ferry, dated April 24th; is that right?

Dr. Weatherspoon: Yes.

Mr. Fischer: The second paragraph; "It is my understanding that the State Court Administrator's Office, the Michigan Judicial Institute, and the Michigan Department of Education, **will jointly sponsor Making Choices And Facing Consequences as a pilot program in ten to fifteen school districts throughout the State of Michigan during the upcoming school year.**" Do you see that sentence?

Dr. Weatherspoon: Yes, I do.

Mr. Fischer: **As of April 24, 2001, was that a true statement?**

Dr. Weatherspoon: **In principle, yes.**

Mr. Fischer: **How was it true in principle?**

Dr. Weatherspoon: **That we had agreed to move forward with a joint effort to make this happen.** (emphasis added)

Dr. Weatherspoon's testimony is consistent with that of Judge Thompson. It is clear that on April 20, 2001 the parties reached an agreement to jointly sponsor Judge Thompson's youth program.

On April 29, 2001, Judge Thompson sent a second letter to Mr. Ferry, Mr. Bowling and Dr. Weatherspoon, along with a rough draft of a letter to be signed by them, inviting the various school districts to the proposed July, 2001 meeting. See Exhibit 64. (As indicated above, one of the agreements reached during the April 20, 2001 meeting was that the co-sponsoring entities would send such a letter.) Judge Thompson testified that he took the initiative and prepared a rough draft of the proposed letter in order to expedite the process. Thompson Tr. pg. 810. The draft letter contained the following two paragraphs:

The war on youth violence must be fought on several fronts. It must be fought in the home, school and streets. It will require bold new initiatives. To win we must negotiate a new partnership and establish a new level, of collaboration between the home, school, courts and the entire criminal justice system.

**We are pleased to announce that the Michigan Supreme Court Administrator's Office, the Michigan Judicial Institute, and the Michigan Department of Education have joined forces to launch such a bold new initiative.** It is called "Making Choices And Facing Consequences, A Middle School Crime Prevention Program." (emphasis added)

Dr. Weatherspoon, Mr. Ferry and Mr. Bowling, acknowledged receiving the April 29, 2001 letter. After receiving that letter, neither Mr. Ferry, Mr. Bowling or Dr. Weatherspoon contacted Judge Thompson and advised him that his assertion concerning the Michigan Supreme Court Administrator's Office, the Michigan Judicial Institute and the Michigan Department of Education joining forces to launch Making Choices And Facing Consequences was incorrect. Bowling Tr. pg. 454. It is inconceivable that all three of these professional men would have

failed to take corrective action if they felt that Judge Thompson's assertions were erroneous.

**H. On August 24, 2001, Dr. Weatherspoon Publicly Announced that the Michigan Department of Education, the Court Administrator and the Michigan Judicial Institute Had Agreed to Co-Sponsor Judge Thompson's Youth Program. Judge Thompson and Dr. McMillon's Testimony Concerning Dr. Weatherspoon's Use of the Word Co-Sponsor is Uncontested.**

On August 24, 2001, Judge Thompson and Dr. Gwendolyn M. Thompson McMillon (Judge Thompson's sister) made a three-hour presentation on Making Choices And Facing Consequences at the Michigan Association of School Board's Mackinac Island Summer Academy. At the conclusion of the presentation, Judge Thompson announced that the State Court Administrator's Office, the Michigan Judicial Institute and the Michigan Department of Education had agreed to sponsor Making Choices And Facing Consequences as a pilot program in 10-15 school districts throughout the State of Michigan. Judge Thompson then introduced Dr. Weatherspoon and asked him to comment on the proposed pilot program.

During the course of the hearing, Dr. McMillon, Mr. Henry McQueen, Judge Thompson and Dr. Weatherspoon all testified concerning Dr. Weatherspoon's specific comments. Dr. McMillon's testimony is clear, unequivocal and uncontested. Commencing at page 762 of the transcript, Dr. McMillon testified as follows:

Attorney Thomas: My question is this: To the best of your recollection what, if anything, did Dr. Weatherspoon say about the Department of Education, the State Court Administrator's Office, and the Judicial Institute, co-sponsoring your brother's Making Choices And Facing Consequences Program?

Dr. McMillon: He said that he was excited about the Michigan Department of Education, the Court Administrator's Office, and the Michigan Judicial Institute, co-sponsoring the program. And, in fact, they were hoping that they would get 10 to 15 school districts to work for the pilot program, and people responded to that by rushing us after the presentation and giving us their names and cards and

wanting to sign up.

Attorney Thomas: And did you, or did you, and whoever else was signing people up that day, sign up at least 10 to 15 school districts?

Dr. McMillon: Definitely.

Attorney Thomas: How many, or approximately how many, were signed up?

Dr. McMillon: I would say probably somewhere between 18 and 25 people signed up during that time.

Also see McMillon Tr. pg. 767.

Mr. Fischer: Did he say co-sponsor or co-sponsorship?

Dr. McMillon: He said: "The Michigan Department of Education, the Court Administrator's, and the Michigan Judicial Institute, had agreed to co-sponsor the program."

Mr. Fischer: You remember that specific sentence?

Dr. McMillon: Yes. Now a minute ago when you asked me you didn't ask for specific words, this time you did.

Mr. Fischer: I asked you for his exact words. I want to know his exact words.

Dr. McMillon: Okay.

Mr. Fischer: Co-sponsor.

Dr. McMillon: Yes.

Judge Thompson also testified that Dr. Weatherspoon used the word "co-sponsor" during his presentation.

Attorney Thomas: What, if anything, did Dr. Weatherspoon say about those three offices co-sponsoring the program?

Judge Thompson: Dr. Weatherspoon said that the Michigan Department of Education, the State Court Administrator, and Judicial Institute would be co-



sponsoring the program as a state-wide pilot in ten to fifteen school districts throughout the State of Michigan.

Attorney Thomas: Are you certain that those are the words that he used?

Judge Thompson: Dr. Weatherspoon used the word co-sponsor.

See Thompson Tr. pgs. 861-862.

Neither Mr. Henry McQueen, the former Superintendent of Buena Vista School District or Dr. Weatherspoon himself remembered Dr. Weatherspoon's specific language and whether or not he (Dr. Weatherspoon) used the word "co-sponsor". See McQueen Tr. pg. 833.

Dr. Weatherspoon candidly admitted that he simply did not remember whether or not he used the word sponsor or co-sponsor during his public endorsement of Judge Thompson's program. Dr. Weatherspoon testified as follows:

Mr. Fischer: Did you make any type of statement to the attendees at that presentation?

Dr. Weatherspoon: I made, you know, some extemporaneous remarks, but I didn't have anything prepared.

Mr. Fischer: Did you say that the Department of Education was sponsoring, in the sense of providing finances, for this program?

Dr. Weatherspoon: The word sponsor I do not remember; but I did say that we like that program.

Mr. Fischer: Did you say that the Department of Education had agreed to –

Dr. Weatherspoon: No, I did not.

Mr. Fischer: — do anything with Judge Thompson?

Dr. Weatherspoon: I did not say that we would -- **I don't know my exact words**, but we were impressed by the program, I was impressed by the program, and the objective was for those Boards to be able to make their own determination as to whether or not they would be interested in participating in the program if it materialized.

And we were supportive of that. (emphasis added)

See Weatherspoon Tr. pgs. 581-582.

**I. Judge Thompson Cites the Parties' Agreement in Additional Letters to Them and Tells Dr. Weatherspoon it is Time to Define What the Agreement to Sponsor His Program "Means."**

On August 27, 2001, Judge Thompson forwarded Dr. Weatherspoon a follow-up letter after the Mackinac Island presentation. The letter in relevant part stated:

"Dear Dr. Weatherspoon:

Thanks for attending our Friday, August 24, 2001 presentation on Mackinaw Island. I was very pleased with the participants' response to Making Choices And Facing Consequences, the excitement surrounding the presentation and the numerous inquiries I received as to how the individual school districts could implement the program. The elusive window of opportunity is open...

**I am excited about the Michigan Department of Education's verbal agreement to jointly sponsor the program** as a pilot, I still don't know what that means. It's time for some more substantive action and for the Michigan Department of Education to define it's level of commitment." (emphasis added)

See Exhibit H. In that letter, Judge Thompson again confirmed the Michigan Department of Education's agreement to jointly sponsor the program. He then raised the need for the parties to define exactly what "jointly sponsor" means and to more precisely define the Michigan Department of Education's level of commitment.

That same day Judge Thompson forwarded both Mr. Ferry and Mr. Bowling a copy of his letter to Dr. Weatherspoon. Judge Thompson's transmittal letter to Mr. Ferry and Mr. Bowling in relevant part stated:

"Gentlemen:

**As you know, its been over four months (April 24, 2001) since we met with Dr. Donald B. Weatherspoon, Assistant**

**Superintendent, Michigan Department of Education and agreed to jointly sponsor Making Choices And Facing Consequences as a pilot program in 10-15 school districts throughout the State of Michigan. There has been very little forward progress since that time." (emphasis added.)**

See Exhibit G.

Also see Bowling Tr. pgs. 495-498 and Ferry Tr. pgs. 143-146 where they acknowledge receiving the referenced letters. The Master is urged to consider this question: If Dr. Weatherspoon, Mr. Ferry, and Mr. Bowling had not agreed to jointly sponsor the program on behalf of their respective offices, wouldn't they have responded to the August 27, 2001 letters? Those letters were not only confirming letters; they were also of a prodding nature.

**J. Judge Thompson Interpreted Dr. Weatherspoon's Public Announcement, Coupled With the Parties' Failure to Object to His Letters, as Meaning They Had an Agreement**

Judge Thompson testified as follows concerning his interpretation of the parties' failure to object to the statements in his confirming letters.

Attorney Thomas: When you sent the letters that you've answered questions about here today, the letter of April 24th, 2001, the letter of April 29th, 2001, and the two letters on August 27, 2001, how did you interpret the lack of a response from either of those three gentlemen concerning the letters that you had sent to them?

Judge Thompson: I interpreted their failure to tell me that there was not agreement as an agreement. In fact, I know that they knew that I was operating under the impression that we had an agreement, I was acting in reliance upon it and I was telling others that we had an agreement. We did have an agreement. They were doing everything that they had agreed to do at each point in time. So I interpreted it as meaning that we had an agreement,

The other thing my letters were designed to do was to basically summarize where we were at, but then to push us forward to the next step.

See Thompson Tr. pgs. 845-846. Judge Thompson also had several telephone conversations with both Mr. Bowling and Dr. Weatherspoon following the April 20, 2001 meeting and they never disputed the content of his letters or told him that they did not have an agreement to jointly sponsor his program. See Bowling Tr. pgs. 384 and 445-446.

Judge Thompson also cited the relevant agreement in four subsequent letters to four different Justices of the Michigan Supreme Court: Justice Elizabeth A. Weaver, October 29, 2001, Exhibit hh; Chief Justice Maura D. Corrigan, October 29, 2001, Exhibit ii; Justice Marilyn Kelly, December 7, 2001, Exhibit jj; and Justice Robert Young, December 7, 2001, Exhibit kk. See Thompson Tr. pgs. 847-855. It is clear that Judge Thompson thought he had reached an agreement with Dr. Weatherspoon, Mr. Ferry and Mr. Bowling.

#### **K. Alleged Misrepresentations Regarding 2001/2002 Law Day Activities.**

- 1. The Saginaw County Bar Association originally approached Judge Thompson about using his program for Law Day. During the Summer of 2001, Judge Thompson agreed to merge his anti-bullying campaign with the Law Day Program.**

Law Day is an annual event held by the Saginaw County Bar Association during May of each year. At some point during his term as President of the Saginaw County Bar Association, July 2000 to June 2001, Attorney Hoffman approached Judge Thompson concerning the possibility of utilizing some part of Making Choices And Facing Consequences in connection with the Bar Association's annual 2002 Law Day event. The planning for the 2002 event actually started in late summer/early fall of 2001. Attorney Hoffman testified that there was "always a push to keep the program as fresh and new and award-winning as possible." No final decision was made at the time that Attorney Hoffman discussed the matter with Judge

Thompson. See Hoffman Tr. pgs. 729-732.

Judge Thompson was elected to the Saginaw County Bar Association's Board of Directors in June 2001. (The Board does not meet during the summer months and his first Board meeting was scheduled for September 5, 2001.) On July 19, 2001, the Michigan Board of Education passed a resolution requiring every public school district to adopt an anti-bullying policy and to implement anti-bullying programs. At that time, there was no model policy for school districts to adopt and there were no formal anti-bullying programs for their use. See Thompson Tr. pgs. 856-857.

Judge Thompson was in the process of completing "Bullyproof" as a component of the Making Choices And Facing Consequences program at the time. He recognized the opportunity that the Board of Education's resolution presented for his program and he decided to incorporate Bullyproof into his scheduled July 20, 2001 and August 24, 2001 presentations at the Michigan Association of School Board's two summer academies. Thompson Tr. pg. 857. (It should be noted that the "Bullyproof" component was not completed when Judge Thompson reached his April 20, 2001 agreement with Mr. Ferry, Mr. Bowling and Dr. Weatherspoon.)

Based on the response he received at the two summer academies, Judge Thompson decided to conduct an anti-bullying program among the local school districts. With the school districts scrambling to comply with the Board of Education's resolution, he saw it as an opportunity to introduce Making Choices And Facing Consequences program to the education community. He envisioned making Bullyproof available in local classrooms through the Saginaw News Partners in Education Program, a puppet show for elementary students, a performance by the U.S. Air Force Strolling Strings, and an essay contest. See Thompson Tr. pg. 863.

About this same time, Judge Thompson was advised that the Saginaw County Bar Association's Executive Director had embezzled a substantial amount of money from the Bar Association and that there were funding issues regarding Law Day 2002. Thompson Tr. pg. 864. Prior to the September 5, 2001 Board Meeting, Judge Thompson's conversation with former Bar President, Attorney Hoffman, concerning the possibility of using Making Choices And Facing Consequences for the theme of Law Day 2002 re-surfaced. Judge Thompson agreed with James A. Brisbois, Jr., Vice President, Saginaw Bar Association, that if the Bar Association adopted his anti-bullying topic for Law Day, he would merge his anti-bullying component with Law Day. Brisbois Tr. pgs. 189-191 and Thompson Tr. pgs. 864-865.

It is critical at this juncture that the Master recall that as part of the Saginaw County Bar Association's Board of Directors normal custom and practice, the Vice-President of the Association is in charge of the annual Law Day event. As a result of that custom and practice, then Vice-President Brisbois was put in charge of the 2001/2002 Law Day Committee. Brisbois Tr. pgs. 210-211 and pg 240.

**2. At the September 5, 2001 board meeting, the bar association formally authorized Judge Thompson to solicit corporate sponsors for Law Day.**

At the September 5, 2001, Saginaw County Bar Association Board of Directors Meeting, the Board voted to change the Law Day 2002 theme and merge Law Day with the anti-bullying campaign. The Board also authorized Judge Thompson to lead a drive to solicit corporate sponsors for the combined anti-bullying/Law Day effort. See Hoffman Tr. pgs. 736-742, Brisbois Tr. pg. 191 and Thompson Tr. pgs. 865-866. (The Master will note that the minutes for the Board Meeting held September 5, 2001 contained an error, which was corrected at the October 2001 Board meeting. See discussion below.)

Judge Thompson testified as follows concerning the September 5, 2001 Board meeting:

Attorney Thomas: What happened at the September 5th, 2001, meeting concerning Making Choices And Facing Consequences and Bullyproof being somehow merged with the Law Day activities?

Judge Thompson: It had been agreed -- remember that the September meeting is the first meeting that Sue Brady would have been sitting as President; you don't meet over the summer. Over the summer all these conversations took place where I had agreed to merge the two.

At the September meeting, it was agreed that I would lead the general appeal to get finances for the merged anti-bullying campaign combined with Law Day and I would be responsible for going after corporate sponsors to underwrite the merged project of the joint activities.

Attorney Thomas: At the time you agreed to do that, Judge Thompson, did you believe there was anything inappropriate or improper regarding your agreement to do so?

Judge Thompson: No.

See Thompson Tr. pg. 866.

During the course of these proceedings, not a single witness contradicted Judge Thompson's testimony as to the events that occurred at the September 2001 Board meeting.

**3. At its monthly Board meeting on October 3, 2001, the Board voted to correct its September 5, 2001 minutes to reflect Judge Thompson's authorization to solicit corporate sponsors.**

The following excerpt is from the Saginaw County Bar Association's Board of Director's October 3, 2001 minutes.

"PRESENT: Susan Whaley-Brady, James Brisbois, Jr., Marie Wasney, Darrell Zolton, Ruth Buko, Randy Price, Robert Jarema and Jeffrey Collison.

ABSENT: Elizabeth Peters, Kenneth Kable, and Honorable M.T. Thompson, Jr.

1. Review of Minutes - September 5, 2001 minutes were corrected to reflect that Judge Thompson would be the individual to attempt a greater push for corporate sponsors (and not Darrell Zolton-Paragraph 2-"Treasurer's Report"). With that amendment, the September 5, 2001 minutes were approved."

See Exhibit 43.

During the course of the proceedings held before the Master, several of the individuals who attended the October 3, 2001 meeting testified: Attorney Brisbois, Attorney Ruth Buko and Attorney Jeffrey C. Collison. Each of them testified that at the October 3, 2001 meeting the Board voted to correct its September 5, 2001 minutes to accurately reflect that Judge Thompson was the individual authorized to attempt a greater push for corporate sponsors. Attorney Collison, who is the current Saginaw County Bar Association President, testified that he prepared the minutes of the October 3, 2001 meeting in the absence of the Board Secretary, Attorney Elizabeth Peters. He also testified that the minutes accurately reflected the Board's actions. See Collison Tr. pgs. 995-997. Attorney Buko also testified concerning the vote to correct the September 5, 2001 minutes. See Buko Tr. pg. 546. It is also undisputed that the Board appointed Attorney Buko to assist Judge Thompson with the collection of the contributions, but, she failed to ever advise Judge Thompson of that action. Throughout his testimony, Attorney Brisbois consistently testified that the Bar Association's Law Day Committee specifically authorized Judge Thompson to solicit funds and advertise for Law Day. See Tr. pgs. 215-216 where the following testimony is reflected:

Mr. Fischer:	Did the Bar Association, excuse me did the Law Day Committee authorize Judge Thompson to solicit anybody on behalf of the Law Day Programs?
Mr. Brisbois:	Yes.
Mr. Fischer:	Specifically authorize Judge Thompson to do solicitations, is



what I'm asking?

Mr. Brisbois: Yes.

Continuing at Tr. pg. 234.

Attorney Thomas: But he was specifically authorized to go out and solicit corporate sponsors?

Mr. Brisbois: Yes.

Attorney Thomas: He was authorized, was he not, specifically to conduct the advertising for the Law Day?

Mr. Brisbois: Yes.

Attorney Thomas: And, as a matter of fact, he was also specifically authorized to come up with the ideas for the entertainment, what might be entertaining for a group of young people; is that also correct?

Mr. Brisbois: Yes.

Attorney Christopher Swartz testified that he is a member of the Saginaw County Bar Association and was on the Law Day Committee for the 2002 Law Day. See Swartz Tr. pg. 1004. Mr. Swartz testified that Judge Thompson was authorized to solicit money on behalf of the Bar Association and that Judge Thompson discussed his efforts on behalf of the Bar Association during three different Law Day Committee Meetings. See Swartz Tr. pg. 1006.

Attorney Thomas: Now, could you tell me when or approximately when the first Law Day Committee meeting was held that you attended?

Mr. Swartz: The best of my recollection was September 2001.

Attorney Thomas: Now, at any of the meetings that you attended, regardless of who else might have been there, do you recall discussions about my client Judge Thompson soliciting moneys for the Law Day event?

Mr. Swartz: Yes.

Attorney Thomas: How many times or approximately how many times do you recall that type of conversation coming up at these meetings?

Mr. Swartz: I would say at least three.

The Master: I'm sorry, let me clarify. You mean three different meetings?

Mr. Swartz: Yes.

During the course of these proceedings, the only witness to even suggest that Judge Thompson was not authorized to solicit monies for the Saginaw County Bar Associations 2002 Law Day activities was Attorney Kenneth Kable. However, Attorney Kable also admitted that he did not serve on the 2001/2002 Law Day Committee.

Attorney Kable also acknowledged that the Board of Directors delegated the authority for all of the Law Day planning and preparation to Attorney Brisbois, Vice President of the Law Day Committee. See Kable Tr. pg. 673. The only information he received concerning any aspect of the Law Day activities was through Attorney Brisbois' periodical verbal reports. Attorney Kable also testified: "In the three years that I served on the Board we were never advised in detail, but we did have progress reports from the Vice-President concerning the ongoing planning." See Kable Tr. pg. 641. Attorney Kable also admitted that historically, Law Day funds had been raised by the Law Day Committee. Kable Tr. pg. 648. Attorney Kable also testified that he did not recall any discussion concerning a push for corporate sponsors at the September 5, 2001 board meeting. See Kable Tr. pgs. 659-660. He was not present at the October 3, 2001 board meeting and testified that he did not recall ever seeing the October 3, 2001 minutes. See Kable Tr. pgs. 668-670.

The Formal Complaint sets forth multiple allegations in regards to Law Day 2002. The

Complaint alleges that Judge Thomson made misrepresentations in his letter to Attorney John Decker concerning two points.<sup>1</sup> First, paragraph 13(A) of the Formal Complaint alleges that Judge Thompson falsely stated that at the request of the Saginaw County Bar Association, he was writing to request a donation of \$3,000.00 to underwrite the cost of a puppet show to be presented as part of the anti-bullying theme. Second, paragraph 13(B) of the Complaint alleges that in the same letter to Mr. Decker, Judge Thompson misrepresented that the Michigan Department of Education, the State Court Administrative Office, and the Michigan Judicial Institute agreed to jointly sponsor the Making Choices And Facing Consequences program. Since the allegation set forth in 13(B) has been adequately addressed at length at pages 2 through 22 of this document, no further discussion of that allegation will be provided. Third, paragraph 14 of the Formal Complaint alleges that Judge Thompson had brochures prepared advertising the Saginaw Bar Association's Law Day and featuring his anti-bullying program without the approval of the Law Day Committee.

It is critical at this juncture for the Master to note that the only witnesses who offered testimony regarding matters approved by the Law Day Committee were the then Vice-President Brisbois, who was called by the Examiner; Judge Thompson; and the witnesses called by counsel for Judge Thompson. Every one of these witnesses supported Judge Thompson's position that he was authorized to advertise the program, raise funds for the program, and participate in planning the program.

Significantly, although the Formal Complaint alleges that Judge Thompson did these things without the Law Day Committee's approval, the Examiner did not call one Law Day Committee member who testified in support of this spurious, meritless allegation. Although the

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<sup>1</sup> Paragraphs 11 and 12 of the Formal Complaint also allege a solicitation in regards to Law Day 2002, however those allegations were addressed supra.

Examiner did call two witnesses, Attorneys Kable and Peters, who served on the Board of Directors, neither of those witnesses were on the Law Day Committee. While the Examiner did call Attorney Buko, who was “supposed” to have played a role with Judge Thompson in pursuing corporate sponsors for Law Day, a thorough review of her testimony found at pages 534 through 554 of the transcript does not reveal one instance where she contradicts Judge Thompson in regards to the authority granted to him by the Law Day Committee. In fact, according to Attorney Buko’s own testimony, the only contact she had with the Law Day event is when she was appointed by the Bar Association Board to assist Judge Thompson by receiving monies solicited for the event. Buko Tr. pgs. 547-552.

The action in assigning that duty to Attorney Buko occurred at the October 2001 Board Meeting. Since Judge Thompson was not at that meeting, Attorney Buko testified that she placed one call to Judge Thompson’s court reporter, Kelli Scorsone, and left a voice mail. Attorney Buko could not even remember what she told Ms. Scorsone in the voice mail message. See Buko Tr. pg. 549. That was the sum and substance of Attorney Buko’s contact with my client and the Law Day Committee. Based upon these facts, it is inconceivable that the Examiner could even argue the actions taken by Judge Thompson in regards to Law Day 2002 were taken without the approval of the Bar Association Law Day Committee.

#### **L. Alleged Failure to Cooperate with the Judicial Tenure Commission’s Investigation.**

While there was a delay in complying with the JTC’s fourth request for information and documents, it did not constitute a failure to cooperate. Judge Thompson serves at a court that does not maintain an insurance policy providing coverage for judges who are the subject of JTC proceedings. As a result of that fact, coupled with Judge Thompson’s financial situation, he represented himself for a period of one and one-half-years in his dealings with the JTC and its

staff. Judge Thompson never practiced in the field of disciplinary law and had no experience with his obligations as a respondent judge. If one were to ask whether Judge Thompson failed to fully comply with one of the JTC's final requests for information, the answer would be yes. However, if one asks whether Judge Thompson failed to cooperate with the JTC in its investigation, the answer becomes a resounding no!

On March 6, 2002, during the course of a Saginaw County Bar Association Board of Directors meeting, Attorneys Peters and Kable confronted Judge Thompson with a copy of his January 7, 2002 letter to John A. Decker, Braun Kendrick Finkbeiner PLC, and accused him of inappropriately soliciting monies for the Law Day anti-bullying campaign. Attorney Susan Brady, the president of the Bar Association, was not present at the meeting. Two days later, on March 8, 2002, Judge Thompson wrote to Attorney Brady and acknowledged that he had solicited a Law Day contribution from John Decker's law firm.

Judge Thompson also advised Attorney Brady that the appropriateness of the solicitation would have to be determined by the appropriate authorities, not the Saginaw County Bar Association. Judge Thompson's letter in relevant part stated "I am simultaneously forwarding a letter to Bruce J. Kilmer, State Court Administrator's Office with all relevant information and asking him to initiate the appropriate investigation."

On March 8, 2002, Judge Thompson telephoned Mr. Kilmer, explained what had happened, and informed him that a detailed letter would follow. On March 11, 2002, Judge Thompson sent Mr. Kilmer a detailed letter listing each solicitation he had made in connection with the Law Day/anti-bullying campaign and copies of each of the relevant solicitation letters. Judge Thompson essentially self-reported his own conduct. Thompson Tr. pg. 879.

Over three months later, on June 24, 2002, Judge Thompson received a 28-day letter

from the Examiner. The letter contained eight allegations of inappropriate solicitations and two allegations concerning misrepresentations. Paragraph 9 of the 28-day letter referenced Judge Thompson's March 8, 2002 letter to Attorney Brady, and paragraph 10 references his March 14, 2002 letter to Mr. Kilmer. The eight allegations of solicitation are those listed in Judge Thompson's letter to Mr. Kilmer. Each of the solicitation letters cited in the Examiner's letter were provided to Mr. Kilmer by Judge Thompson himself.

By letter dated July 15, 2002, Judge Thompson admitted the eight allegations concerning solicitations and denied the two concerning misrepresentation. He also provided the Examiner with a detailed chronology of his meetings and discussions with Dr. Weatherspoon, Mr. Ferry and Mr. Bowling and copies of the various confirming letters. Thompson Tr. pgs. 879-990.

Approximately six months later, on December 11, 2002, the Examiner mailed Judge Thompson a supplement to the 28-day letter requesting additional information and documents. Judge Thompson telephoned the Examiner with questions about his request for additional information and documents. The Examiner was very rude, condescending, and abrasive. Thompson Tr. pg. 880.

By letter dated January 7, 2003, Judge Thompson responded to the Examiner's December 11, 2002 letter. He also requested copies of the two grievances which had been filed against him. To date, neither the Examiner nor the JTC has ever provided the grievances to Judge Thompson.

On or about January 16, 2003, Judge Thompson received a handwritten subpoena from the Examiner. On January 27, 2003, Judge Thompson fully complied with the subpoena. His transmittal letter in relevant part stated:

"Despite my request, I still have not received a copy of the two outstanding

grievances against me. Fundamental fairness and due process require their production. A judge should not be required to shadow-box with vague and general allegations of misconduct or unfounded suspicions of wrongdoing."

The Examiner still refused to provide Judge Thompson with copies of the two grievances. Thompson Tr. pg. 881.

On or about February 3, 2003, Judge Thompson received a fourth request for information and documents from the Examiner's office. On February 5, 2003, Judge Thompson telephoned the Examiner. It had been almost a full year since Judge Thompson self-reported himself. He had provided all kinds of documents, took the time necessary to create documents containing the information being sought, answered various questions, and admitted eight of the ten outstanding allegations. Judge Thompson had been very cooperative and he wanted to know just how long the investigation was going to continue.

The Examiner basically told Judge Thompson that as a judge he was required to give him or the JTC anything they asked for. Thompson Tr. pgs 880-886. Judge Thompson couldn't help but wonder if the Examiner talked to other judges in the same manner or if there was something about him (Judge Thompson) that made the Examiner think he could conduct himself in that manner.

Judge Thompson basically told the Examiner that he was not going to give him any additional documents until he provided him with copies of the two grievances. The only documents which Judge Thompson had not provided at that point were copies of the Making Choices And Facing Consequences program materials and the Bullyproof materials. Thompson Tr. pgs. 882-886. On February 20, 2003, Judge Thompson sent the Examiner a confirming letter. Thereafter, Judge Thompson hired the undersigned, who promptly provided the Examiner with the requested information and documents. Thompson Tr. pg. 886.

In light of the forgoing, the Master must decide whether Judge Thompson's conduct constitutes a failure to cooperate as contemplated under MCR 9.200 et seq., or whether the failure to promptly provide non-essential documents resulted from a personality conflict between the Examiner and Judge Thompson. At this juncture, the Master is urged to recall a rather heated exchange that took place between Judge Thompson and the Examiner. The Master responded to the exchange by stating: "Come on, stop this personal stuff, both of you." Thompson Tr. pg. 984.

Judge Thompson's conduct in not providing certain materials relating to Making Choices And Facing Consequences and Bullyproof, does not constitute misconduct in office as contemplated by Art. VI sec. 30 of the Michigan Constitution or the Michigan Court Rules. Judge Thompson should not be held accountable for a failure to promptly provide non-essential documents which could have been obtained from numerous other sources.

## **CONCLUSION**

Judge Thompson solicited monies for his youth program(s) which he desperately wanted to see implemented. He wanted to help children and he saw an opportunity to do so. He did not personally profit from his solicitations. In fact, he spent money out of his own pocket to further Making Choices And Facing Consequences. In his zeal to help children, he did not give proper consideration to developing ways to raise funds for the program. He testified under oath that when he solicited the funds referenced in the Formal Complaint, he did so because he felt that his doing so represented a "general appeal." See Thompson Tr. pgs. 950 and 951. Judge Thompson testified that he believed his solicitations met the requirements of Canon 5 of the Code of Judicial Conduct. That section reads in pertinent part:



A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of the office for that purpose, but may be listed as an officer, director, or trustee of such an organization. **A judge may, however, join a general appeal** on behalf of an educational, religious, charitable, or fraternal organization, or speak on behalf of such organization. (emphasis added.)

Judge Thompson testified that he believed that since his solicitations constituted a “general appeal,” coupled with the fact that he was not benefiting from the money and was putting it beyond his own reach, the Canon was satisfied. Judge Thompson’s testimony in this regard is corroborated by the fact that when he met with Mr. Ferry, Mr. Bowling, and Mr. Kilmer on March 12, 2001, he informed them that he had received two \$7,500.00 donations. The uncontroverted evidence also shows that he was concerned over the fact that one of the \$7,500.00 checks came directly to his home. He not only informed Mr. Ferry, Mr. Bowling, and Mr. Kilmer that he had received the monies, but also that he had deposited the funds with the Saginaw Community Foundation. In fact, the handwritten notes taken by Mr. Bowling and Mr. Kilmer provide physical support for Judge Thompson’s testimony. In its totality, the evidence concerning Judge Thompson’s solicitations discloses that:

- (1) Judge Thompson admitted, nearly two years ago when these allegations first surfaced, that the solicitations occurred.
- (2) There was little need, if any, for the Examiner to introduce evidence regarding the solicitations, since Judge Thompson admitted in his Answer to the Formal Complaint that they occurred. (He also admitted from the outset that he used court stationery in regards to the written solicitations.)
- (3) Judge Thompson did not personally benefit from the youth program(s) or the solicitations.
- (4) Although Judge Thompson had the best of intentions, the solicitations violated Canon 5.
- (5) Judge Thompson did not intentionally violate the Canon.

As for the allegations regarding “misrepresentation,” there is not one shred of evidence introduced in the record which would show that Judge Thompson misrepresented anything. He is a man of integrity and honesty, as evidenced from character testimony provided by the Examiner’s own witness. See *Brisbois Tr.* pg. 255.

The term misrepresentation carries with it an element of scienter, not only in the law, but in common parlance as well. Webster’s New Collegiate Dictionary provides the following definition:

**misrepresent:** 1: to give a false or misleading representation of usu. with an intent to deceive or be unfair (~ed the facts to suit his purpose)  
2: to serve badly or improperly as a representative of...

Barron’s Law Dictionary, 3<sup>rd</sup> Edition, provides:

**MISREPRESENTATION** see **false pretense**.

**FALSE PRETENSE** the statutory offense of obtaining property by false pretense. Essential elements include an intent to defraud, an implied or express false representation, and obtaining property as a result of that misrepresentation. 183 N.W. 2d 813, 815....

Roget’s II The New Thesaurus, 3<sup>rd</sup> Edition, provides:

**Misrepresent** *verb*

To give an inaccurate view of by representing falsely or misleadingly : belie, color, distort, falsify, load, misstate, pervert, twist, warp, wrench, wrest...

**Misrepresentation** *noun*

An untrue declaration : canard, cock-and-bull story, falsehood, falsity, fib, fiction, inveracity, lie, misstatement, prevarication, story, tale, untruth...

There is no evidence indicating that Judge Thompson made intentional misstatements as alleged in the Complaint. Further, as stated in Judge Thompson’s Affirmative Defense, even if he was wrong in believing that the Department of Education, State Court Administrator’s Office

and Michigan Judicial Institute agreed to sponsor his youth program, he had a reasonable basis for making such an assertion.

The same affirmative defense applies to the allegation that Judge Thompson misrepresented, in his January 7, 2002 letter to John Decker, that he was soliciting funds at the behest of the local bar association. Judge Thompson clearly had a rational, logical, and most importantly, a reasonable basis for believing all of his statements were true. At the close of the Examiner's proofs, the evidence supporting Judge Thompson's position regarding the alleged misrepresentations were so overwhelming, that Judge Thompson's counsel made a motion seeking dismissal of those allegations. At that time, the Master indicated that although he was obligated to view the evidence in a light most favorable to the Examiner, he agreed to revisit the issue at a later time. That time has come, and the allegations of misrepresentation must be dismissed.

As for the allegation that Judge Thompson advertised for Law Day and the Bullyproof program without the Law Day Committee's approval, that allegation must be dismissed. The Examiner's own witnesses, including Attorney Brisbois, testified that Judge Thompson had full authority to conduct such advertising. Second, even if true, such conduct would not constitute misconduct and should never have been made as an allegation in the complaint.

Lastly, the allegation that Judge Thompson failed to cooperate in the JTC's investigation should be dismissed for the reasons set forth more fully at pages 28 through 32 above. The dispute which arose between the Examiner and Judge Thompson became personal. This is not a case where a respondent judge ignored requests for information, hid or destroyed evidence, or sought to influence witness testimony. The only thing Judge Thompson sought in exchange for the final information requested by the Examiner was copies of the two grievances filed against

him. How unfair it is that in the third century of our country's great history, a judge accused of wrongdoing in a JTC investigation was not even afforded the most basic of rights, the right to notice of the precise allegations and the identity of one's accuser?

Appropriate Findings of Facts and Conclusions of Law are appended to this document.

Respectfully submitted by:

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Philip J. Thomas (P31298)

**Proof of Service**

The undersigned certifies that the original of this document was mailed to the Judicial Tenure Commission at its address of record, on January 26, 2004, and that a copy of this document was mailed to the Master at his address of record, on January 26, 2004.

The above statement is true to the best of my knowledge, information and belief.

Dated: \_\_\_\_\_

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MaryAnn Vanover